

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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|------------------------------------|---|---------------------------|
| JON FEINGERSH PHOTOGRAPHY, INC.,) |) | |
| |) | |
| Plaintiff, |) | Case No. 2:13-CV-00078-AB |
| |) | |
| v. |) | |
| |) | |
| PEARSON EDUCATION, INC. and |) | |
| CORBIS CORPORATION, |) | |
| |) | |
| Defendants. |) | |
| |) | |
| _____ |) | |

**REPLY REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT CORBIS
CORPORATION’S MOTION TO DISMISS (DOCKET NO. 19)**

Defendant Corbis Corporation (“Corbis” or “Defendant”) hereby requests the Court take judicial notice pursuant to Fed. R. Evid. 201 of the document attached hereto as Exhibit A for the reasons set forth below.

AUTHORITY FOR JUDICIAL NOTICE

When ruling on a Rule 12(b)(6) motion to dismiss, a district court may consider the allegations contained in the complaint, exhibits attached to the complaint, matters of public record, and records of which the Court may take judicial notice. *Schafer v. Decision One Mortg. Corp.*, No. CIV.A. 08-5653, 2009 WL 1532048, at *3 (E.D. Pa. May 29, 2009) (citation omitted). The Court can take judicial notice of facts “not subject to reasonable dispute.” Fed. R. Evid. 201(b). Among the facts not subject to reasonable dispute are those “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Fed. R. Evid. 201(d) provides that, “Judicial notice may be taken at any

stage of the proceeding,” including on a motion to dismiss. *See, e.g., Schafer*, 2009 WL 1532048, at *3.

Exhibit A: Exhibit A is a document filed in federal court in another action against Corbis by counsel for Plaintiff in this action. Specifically, Exhibit A constitutes Exhibit 3 to Plaintiff’s Reply on Motion to File First Amended Complaint, publicly filed as Dkt. No. 38-3 by the plaintiff in *Lefkowitz v. Houghton Mifflin Harcourt Publishing Co.*, Case No. 1:12-CV-10614-FDS, pending in the United States District Court for the District of Massachusetts, on February 21, 2013. Exhibit A reflects a letter from Corbis responding to the subpoena issued to Corbis by Plaintiff in this action, Jon Feingersh Photograph, Inc., in a prior action brought in this Court entitled *John Feingersh Photography, Inc. v. Pearson Education, Inc.*, No. 11-CV-05122-AB.

This document is a matter submitted to the public record by Plaintiff’s counsel, not subject to reasonable dispute, capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and is therefore the proper subject of judicial notice. *See Schafer*, 2009 WL 1532048 at *3 (noting that a court may take judicial notice of court records, including documents from state court and bankruptcy proceedings); *Feingold v. Unitrin Direct*, CIV.A. 12-1250, 2012 WL 3866945, at *1 n.3 (E.D. Pa. Sept. 6, 2012) (taking judicial notice of state court filings when ruling on a Motion to Dismiss); *Brooks v. CBS Radio, Inc.*, No. CIV.A. 07-0519, 2007 WL 4454312, at *4 n.4 (E.D. Pa. Dec. 17, 2007) *aff’d*, 342 F. App’x 771 (3d Cir. 2009) (taking judicial notice of administrative and state court records); *Coppedge v. City of Philadelphia*, No. CIV.A. 12-1917, 2012 WL 3815566, at *1 n.2 (E.D. Pa. Sept. 4, 2012) *aff’d*, 12-4014, 2013 WL 540474 (3d Cir. Feb. 14, 2013) (taking judicial notice of related state court filings when ruling on a Motion to Dismiss).

For the foregoing reasons, Corbis respectfully requests that the Court grant their request for judicial notice.

Respectfully,

Dated: March 14, 2013

FENWICK & WEST LLP

By: /s/ Laurence F. Pulgram
Laurence F. Pulgram, *admitted pro hac vice*
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Attorneys for Defendant
CORBIS CORPORATION

CERTIFICATE OF SERVICE

I, Laurence F. Pulgram, certify that on March 14, 2013, I caused a copy of the foregoing Reply Request for Judicial Notice in Support of Defendant Corbis Corporation's Motion to Dismiss (Docket No. 19) to be filed electronically on this Court's ECF system, which provides a Notice of Electronic Filing to registered counsel of record and where the motion can be viewed and downloaded.

Dated: March 14, 2013

/s/ Laurence F. Pulgram

Laurence F. Pulgram